

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. 65065

Elizabeth McGraw-Austin
Randolph K. Austin
4543 Schenley Road
Baltimore, MD 21210

14½ Linden Terrace

Respondents

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on September 9, 2009 for a Hearing on a Citation for violations under the Baltimore County Zoning Regulations (BCZR) section 101, 102.1, 1B01.1, 408B, failure to cease the use of the property as a rooming/boarding house; and a Citation for violations under Baltimore County Code (BCC) section 13-4-201 (b)(d), failure to store trash in containers with tight fitted lids; 13-7-310, failure to cease accumulation of garbage, rubbish and trash on residential property known as 14½ Linden Terrace, 21286.

On August 18, 2009 and September 1, 2009, pursuant to Baltimore County Code §3-6-205, Inspector Latoshia Rumsey-Scott issued Code Enforcement & Inspections Citations. The Citations were sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The Citations proposed civil penalties of \$3,000.00 (three thousand dollars) and \$500.00 (five hundred dollars).

The following persons appeared for the Hearing and testified: Elizabeth McGraw-Austin, Respondent; Lyle Jones, Esq., counsel to Respondent; Edward Kilcullen, Complainant; and, Latoshia Rumsey-Scott, Baltimore County Code Enforcement Officer.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. A Correction Notice was issued on July 22, 2009 for removal of trash and debris, proper storage of garbage in cans with lids, and cut or remove tall grass and weeds. These Citations were issued on August 18, 2009 and September 1, 2009.

B. Inspector Rumsey-Scott testified that after receiving a complaint, she inspected the property and issued the Correction Notice for junk, trash, debris, open dump conditions, and cans without lids. Following investigation including obtaining information and reports from the Police Department, she issued the Citations. Respondent did return the County's Interrogatories, on August 31, 2009. Inspector Rumsey-Scott testified that there were four tenants living in the property, which does not have a boardinghouse or roominghouse license. A police report dated July 21, 2009 names four tenants based on an interview with one tenant. The tenants were all students at Towson University. The father of one tenant telephoned Inspector Rumsey-Scott on August 31, 2009 and said there were four tenants. Respondent has a Rental Housing License for this property.

C. The Interrogatories returned by Respondent name two adult persons residing on the premises plus "one subletter." The Interrogatories state that the two named tenants are "cousins." The attached lease named the same two persons and was cosigned by a parent of each named tenant.

D. Ed Kilcullen is a neighbor and member of the Towson Manor Village Association. He testified that multiple vehicles have been parked at this property, in the driveway and in the backyard. He drives by the house on a daily basis on his way to work. Mr. Kilcullen testified that this house has been a problem for three years, with too many tenants, disruptive parties, untagged vehicles, and trash all over the yard and porch. He emailed Respondent Elizabeth McGraw-Austin on June 17, 2009 to ask how many tenants were in the house and to complain that there were five cars parked in the driveway on a regular basis; Respondent did not respond to his message. Mr. Kilcullen testified that the July 15, 2009 party that generated Police Department response was so loud that he could hear it around the corner.

E. Lyle Jones, attorney for Respondent, stated that his client had a lease with two individuals who were members of the Towson University football team. He further stated that a third individual was living there who was supposed to be a cousin but, that when his client requested proof none was forthcoming. He further stated that Respondents purchased the property in 2004 intending to make it their residence but the neighborhood has changed since then including some Victorian houses being sold to a developer who has razed them and left the lots empty. Respondents are renovating their home in northern Baltimore City instead of moving into this house.

F. Respondent Elizabeth McGraw-Austin testified that students were renting the house when they purchased it. Then a family rented it and then students again. She testified that they have sought to be good neighbors and there was no intentional violation. She was in touch with three sets of parents; the parents talked to the University who recommended they move out. She testified that she only had knowledge and granted permission to three tenants; she learned there was a fourth person in the house and told them to move out. She acknowledges she did not have proof of family relationship for the third tenant. All tenants have been asked to vacate the premises. She tried to check the premises the day before this Hearing but the tenants were still in the process of moving out; they have a pit bull dog and she was not able to enter the property. She testified that Respondents will clean up the property and want to be good neighbors.

G. Photographs in the file show cans overflowing with bagged garbage and no lids; bags of garbage on the ground and loose trash and garbage strewn on the ground; and bagged garbage on the porch. This violates prohibitions against the accumulation of junk, trash and debris on residential property, and prohibitions against creation of possible harborage for rats. As the property owners, Respondents are responsible for the proper maintenance of their investment property, and based on the evidence presented they have failed to monitor the property's condition and failed to clean up the property even after receiving the County's Correction Notice.

H Baltimore County's zoning regulations restrict the number of unrelated adults who can occupy a house for compensation. Because this is not the owner's domicile, the house can only be occupied by two unrelated adults absent a permit for a boarding-or rooming-house. BCZR Section 101.1; Section 408B. The evidence clearly shows that four tenants were residing in this property. Thus, based on the evidence presented, an illegal boardinghouse with more than two tenants has been operating at this location for at least one month. However, while the written lease began on May 15, 2009, there is no specific evidence showing when the third and fourth tenant moved in, prior to the police report on July 21, 2009. Respondents may not have known about or authorized the fourth tenant, but they knew about the third tenant. Respondents did not make any apparent effort to confirm that two tenants were related, and in any event Respondents have not asserted that all three tenants were related to each other, which would be necessary to comply with the zoning restriction. The fact that Respondents entered into a lease agreement with only two tenants but knowingly rented the property to at least three tenants indicates an intent and plan to evade the County's zoning regulations.

I. Respondents' positive actions should be considered in determining the appropriate disposition of the pending Citations. Respondents do have a Baltimore County Rental Housing License for this property. Respondents did respond to the County's written Interrogatories. Respondents have terminated the lease for these tenants and as of the date of this Hearing the tenants are in the process of vacating the premises. Respondents have committed to correct all code violations. Because compliance is the goal of code enforcement, the civil penalty will be reduced if the violations are corrected within the time provided below.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$3,000.00 (three thousand dollars) for the Citation regarding rooming/boarding house.

IT IS FURTHER ORDERED that the civil penalty will be REDUCED to \$500.00 (five hundred dollars) if the violations are corrected by November 2, 2009, with re-inspection finding the property occupied by no more than the permitted number of unrelated tenants.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$500.00 (five hundred dollars) for the Citation regarding improper storage of garbage and, the impermissible junk, trash and debris.

IT IS FURTHER ORDERED that the civil penalty will be REDUCED to \$100.00 (one hundred dollars) if the violations are corrected by November 2, 2009, with re-inspection finding the property in compliance with requirements for proper storage of garbage and no impermissible junk, trash or debris.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty as authorized above shall be imposed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 16th day of October 2009.

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.